

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.2389 OF 2007
[LEAVE TO APPEAL]

IN

CRIMINAL APPEAL NO. OF 2007

Raj Enterprises. ..Applicant.
Versus
State of Maharashtra and
2 Ors. ..Respondents.

Mr.S.R.Saudagar, Adv. for the Applicant.
.....

CORAM : SMT.V.K.TAHILRAMANI, J.
DATED : NOVEMBER 30, 2007.

P.C.:

1. Heard.

2. The applicant-orig.complainant has challenged the judgment and order dated 24.4.2007 passed by the learned SMM & Small Causes Court Judge, Small Causes Court, Mumbai-2 in C.C. No.1809/SS/2005. By the said judgment and order the learned Magistrate acquitted the respondent-accused of the offence punishable under Section 138 of N.I. Act.

3. In the present case the complaint is filed by the power of attorney of the original complainant. On perusal of the said power of

attorney, it appears that though it is attested by Notary, the Notary has nowhere specified the number of his own register wherein the said document is actually registered by him. No number is reflected in the document. In such case, it is difficult to say that the power of attorney was really executed by the partners of the complainant-firm, as stated by the representative of the complainant. From the record it appears that the original complaint is signed by the representative of the complainant on the basis of the aforesaid authorisation. Further the representative of the complainant during the course of cross examination has specifically admitted the fact that the partner of the complainant has instructed the advocate while preparing the original complaint. Therefore, even the complaint cannot be said to be prepared as per the instructions of the representative.

4. It is pertinent to note that the defence of the respondent-accused was that there was absolutely no liability of the accused due and payable to the complainant. Here it is also pertinent to note that the representative of the complainant has admitted in clear terms that there

is absolutely no transaction referred in the books of account in respect of the accused person and there is absolutely no documents in which the accused had accepted the liability. Thus, it appears that there are no legal liability on the respondent-accused to pay anything to the complainant. All these aspects have been considered by the learned Magistrate and thereafter he has acquitted the respondent-accused.

5. On perusal of the papers, I am of the opinion that the view taken by the learned Magistrate is a reasonable and possible view.

6. It is well settled that if the view of acquittal could have been reasonably arrived at then mere circumstance that the lower Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am referring to only two of them i.e. **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar and C.Anthony Vs. K.G.Raghavan Nair, (2003) 1 SCC 1.** In the case of **C.Anthony**, the Supreme Court has observed that unless the findings of the trial

..(4)..

Court are perverse or contrary to the material on record, the High Court cannot in Appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record. As stated earlier, the view taken by the learned Magistrate is a reasonable and possible view hence, no interference is called for. Application for leave to appeal is rejected. Consequently, Appeal also stands dismissed.

(SMT.V.K.TAHILRAMANI, J.)